IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

Crl.MC.No. 1477 of 2004(D)

CC.92/2001 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER: ACCUSED:

1. HAMEED, S/O. MOIDEEN,
   ELAYIDATH HOUSE, KOLATHARA, CHERUVANNUR,
   KOZHIKODE.

2. SAINABA, W/O. MOIDEEN,
   ELAYIDATH HOUSE, KOLATHARA, CHERUVANNUR,
   KOZHIKODE.

3. MOIDEEN,
   ELAYIDATH HOUSE, KOLATHARA, CHERUVANNUR,
   KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE:

1. SUB INSPECTOR OF POLICE,
   MANJERI POLICE STATION, KOZHIKODE.

2. STATE OF KERALA,
   REP. BY PUBLIC PROSCUTOR, HIGH COURT OF KERALA.

ADDL. R3 IMPLEADED:-

3. KANIYARAKKAL KHADEEJA
   D/O. ABOOBACKER, AGED 44 YEARS,
   KARNIVAYAL, PATHIYANGAD AMSOM,
   KOZHIKODE TALUK.

(ADDL. R3 IS IMPLEADED AS PER ORDER DATED 06.01.2005
IN CRL. M.S. NO. 13978/2004)

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR
SRI.B.PREMNATH (E)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 1477 OF 2004

Dated this the 16th day of November 2006

ORDER

The petitioners, who are the accused in C.C. No. 92/2001 in the file of Chief Judicial Magistrate, Manjeri with respect to the offences under sections 419, 465, 468 r/w 34 IPC, has sought for setting aside the further proceedings in the matter as per annexure B order of the court below.

2. The prosecution case is that on 23.12.1999 the second accused, the mother of the first accused with the help of the 3rd accused, husband of the second accused procured tax receipt of the property belonging to CW1 and by falsely personating her appeared before the court and filed an affidavit and obtained an order for bail for the first accused.

3. I find that as per annexure B order, the court has found that the evidence involved is only under section 205 IPC. Since the offence of false personation was committed before the court of Judicial First Class Magistrate I, Majeri, section 195 (1) B (1)

Cr.P.C will be attracted. The court found that the entire procedure adopted appeared to be erroneous. Further in the penultimate paragraph of the order, the court has addressed the Sessions Judge seeking to invoke the power under section 397 Cr.P.C in revision and for appropriate directions. It is the above portion of the order that the petitioner has challenged.

4. The counsel for the 3rd respondent, the defacto complainant who was subsequently impleaded, has submitted that the second accused has actually forged the signature of the defacto complainant and sworn an affidavit before the court and hence the ratio of decision reported in **Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another** (2005 (4) SC 370) that section 195 (b)(2) Cr.P.C would be attracted only when offence enumerated in the said provision has been committed with respect to a document after the same has been produced or given in proceedings in any court, that is, during the time when the document was in custody of the court, is applicable to the facts of the case. According to him, the swearing as to the facts , affixing the false signature etc. were done not before the court and hence the private complaint filed alleging offences under

section 419, 465, 468 is perfectly maintainable.

5. I find that the 3rd respondent/defacto complainant has not challenged in the order of the court by taking up the matter. The prosecutor has conceded before the court as is evident from the above order that only s. 205 IPC will be attracted. So far as section 205 IPC is concerned the offence is squarely covered by section 195 Cr.P.C. Hence further action in the matter contemplated by the court by addressing to the Sessions Judge, I find, it is not contemplated under the provisions of the Code.

6. In the circumstances, the above direction of the court to address the Sessions Judge for invoking power under section 397 Cr.P.C is not required in the matter and also cannot be said to be legal.

In the result, the Crl. M.C is allowed. The order to initiate further proceedings in the matter is herewith quashed.

K.R. UDAYABHANU, JUDGE.

RV